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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,478	12/21/2001	James B. Melesky	13811	4450
22822	7590	12/14/2006	EXAMINER	
LEWIS, RICE & FINGERSH, LC			A, PHI DIEU TRAN	
ATTN: BOX IP DEPT.				
500 NORTH BROADWAY			ART UNIT	PAPER NUMBER
SUITE 2000			3637	
ST LOUIS, MO 63102			DATE MAILED: 12/14/2006	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/024,478	MELESKY, JAMES B.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Phi D. A	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 September 2006.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 14,17,21,22,24,25,27-29,31 and 32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 17 and 21 is/are allowed.
- 6) Claim(s) 14,22,24,25,27-29,31-32 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | Paper No(s)/Mail Date. _____.                                     |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____.                         |

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 14, 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al (4344505) in view of Helbig (4312423).

Waters et al shows an insulating assembly in combination with an existing attic access, the combination comprising an existing attic access (figure 2) having a surrounding structure (AF, its supporting structures, and C) integral to a ceiling of a building and providing access to the building's attic defining an existing attic access opening therethrough and having an existing trap door (figure 2, the covering which is attached to the pull down device) for closing the existing attic access opening, an insulating cover (26, 20,24,22, 28) placed on the surrounding structure and including the door a continuous frame (26, 20, 24, 22) having spaced side walls and spaced end walls and which frame is formed of a free standing insulating material having an upper surface and a lower surface, the frame defining an opening there through, the frame opening being aligned with said existing attic access opening (see figure 2), the frame being of a size and configuration so as to enclose the existing access opening when the lower surface is supported on the surrounding structure, a removable closure member (28) formed of a free standing insulating material, the removable closure member including an upper portion forming flanges, the flanges extending laterally outward, the flanges sizes and shaped to frictionally and snugly engage an upper surface of each of said side walls and end walls of the frame when the

closure member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the insulating material of the closure member and the frame being an expanded polymeric material ( col 2 line 40), the trap door comprising a hatch, the trap door is attached to a fold down attic access ladder.

Waters et al does not show the closure member not being bonded to any portion of the continuous frame, the closure member including a central portion, the depending central portion being sized and shaped to fit within the frame opening defined by the frame and frictionally and snugly engage each of the side walls and the end walls of the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in a covering relationship with respect to the frame opening, the closure member being not hinged to and detaches from the frame when the first and second continuous seal are broken by a force applied to the closure member through the frame opening, leaving the frame enclosing the existing attic access opening, the first and second seals being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

Waters et al further discloses that any manner for allowing a person to move the cap away from its position over the opening is within the scope of the invention (col 3 lines 16-21), and an embodiment would be to hingedly move the cover away from the opening.

Helbig shows a removable closure member (24, 28), the closure member not being bonded to any portion of a frame (26), the closure member having a depending central portion (24, the flat portion and the sides thereof), the depending central portion being sized and shaped to fit within the frame opening and frictionally and snugly engage the frame (26) inside the

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opening to create a first seal with the frame, an upper portion forming flanges, the flanges (the part of 28 which extends beyond the sides of part 24) extending laterally outward relative to the depending central portion, the flanges being sized and shaped to frictionally and snugly engage an upper surface of the frame to create a second continuous seal with the frame when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the closure member is not hinged to and detaches from the frame when the first and second seal being broken by a force applied to the member through the opening, the first and second seal being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al to show the closure member including a central portion, the depending central portion being sized and shaped to fit within the opening defined by the frame and frictionally and snugly engage the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in covering relationship with respect to the opening defined by the frame, the flanges sitting on the top surface of the frame because having the flanges of the closure member fitting over an upper surface of a frame, a central portion of the closure member snugly fitting against the inside surfaces of the frame would enable secure, easy precise positioning and supporting of the closure member on a frame as taught by Helbig.

Waters et al as modified by Helbig shows the closure member not being bonded to any portion of the continuous frame, the closure member including a central portion, the depending central portion being sized and shaped to fit within the frame opening defined by the frame and

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frictionally and snugly engage each of the side walls and the end walls of the frame inside the opening to create a first continuous seal with the frame when the closure member is positioned on the frame in a covering relationship with respect to the frame opening, the closure member being not hinged to and detaches from the frame when the first and second continuous seal are broken by a force applied to the closure member through the frame opening, leaving the frame enclosing the existing attic access opening, the first and second seals being generally orthogonal to each other when the member is positioned on the frame in covering relationship with respect to the opening defined by the frame.

3. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Anghinetti et al (3896595).

Waters et al as modified shows all the claimed limitations except for the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in place.

Anghinetti et al discloses a handle (38) secured to the lower surface of the depending central body portion (18) of the closure member so as to be accessible within the access opening when the insulating cover is in place to facilitate easy maneuvering of the closure member.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member having at least one handle mounted to extend from a lower surface of the depending central portion of the closure member so as to be accessible within the access opening when the insulating cover is in

place because it would enable easy maneuvering of the closure member from the access opening as taught by Anghinetti et al.

4. Claims 24, 31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Fuller (4281743) and Porter (5628158).

Waters et al as modified shows all the claimed limitations except for the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for adhesively securing the opposing edges in inter-fitted relationship so as to form a unified closure member.

Fuller shows the closure member including at least first and second components (52, 53a, 53b, 52, figure 2) each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween, and means for securing the opposing edges in inter-fitted relationship to form a unified closure member.

Porter discloses adhesive means joining panel edges together.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member including at least first and second components each having opposing edges which are configured to cooperatively engage one another to create a tortuous seal path therebetween as taught by Fuller, and means for adhesively securing the opposing edges in inter-fitted relationship to form a unified closure member because having the closure member made of multiple components would opposing edges engaged one another to create tortuous seal path therebetween would enable the

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creation of a large closure member from smaller pieces and thus resulting in ease of manufacturing and transport, and having the edges of the components joined adhesively would ensure the proper securing of the components together at assembly as taught by Porter.

Waters et al as modified shows the closure member comprising at least two pieces, the two pieces having a seal between them when positioned within the frame in covering relationship with respect to the opening defined by the frame, and the pieces are adhered together.

5. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Waters et al in view of Helbig as applied to claim 14 above, and further in view of Daw et al (4832153).

Waters et al as modified shows all the claimed limitations except for the closure member being coated with a fire retardant material.

Daw et al discloses a closure member being coated with a fire retardant material (col 2 lines 47) to ensure safety against fire.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Waters et al's modified structure to show the closure member being coated with a fire retardant material because it would protect the closure from fire as taught by Daw et al.

#### *Response to Arguments*

Applicant's arguments with respect to claims 14, 22, 24-25, 27-29, 31-32 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument that the references when combined failed to show the opening having a surrounding structure and an insulating cover comprising two detachable parts, examiner respectfully disagrees. As pointed out in the rejection above, Waters et al shows

the opening having a surrounding structure as claimed. Waters et al as modified by Helbig shows the insulating cover having a first detachable part (20, 22, 24, 26) and a second detachable part (28). The parts are detachable from each other as per Helbig's teaching; the cover is completely detachable from other structures as it is only snug fit on the frame. The combined references thus show the limitations as claimed.

With respect to applicant's argument to Helbig's teaching, examiner respectfully points out that Helbig is the secondary reference, which is used to modify Waters et al, which is the primary reference. Helbig's teaching is to the use of a cover having outer flanges that rest on an upper surface of a frame and inner depending central portion that snug fit on the sides of the frame, the cover also is free of other fixedly attachment to the frame other than the frictional fit. Modifying Waters et al's teaching with Helbig thus results in a structure having an enclosure which is easily secure, easy precise positioning and supporting of the closure member on a frame for removable without extra fastening device. Waters et al as modified also shows all the claimed limitations including an existing attic opening having a surrounding structure integral to the building's ceiling, a frame whose lower surface is on that surrounding structure and encloses the existing attic opening, and a removable closure member designed to seal the frame at its upper and interior surfaces. The argument is thus moot.

1. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The rejections based on Waters et al in view of Helbig and other references to Anghinetti, Fuller, Porter and Daw, thus are also proper. The argument is thus moot.

With respect to applicant's statements to the Rule 132 Declarations submitted, examiner respectfully points out that the prior art provides motivation to modify the reference Waters et al. Waters et al as modified shows all the claimed limitations. The argument is thus moot.

***Allowable Subject Matter***

2. Claims 17, 21 are allowed.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Phi Dieu Tran A

12/9/06